PROVINCE OF SASKATCHEWAN

09-10

ANNUAL REPORT

MINISTRY OF JUSTICE AND ATTORNEY GENERAL

Law Reform Commission
of Saskatchewan

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This annual report is also available in electronic format from the Ministry's website at **www.justice.gov.sk.ca**

Letters of Transmittal

His Honour the Honourable Dr. Gordon L. Barnhart
Lieutenant Governor, Province of Saskatchewan

May it Please Your Honour:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the fiscal year ending March 31, 2010.

D R Morgan

Don Morgan, Q.C.
Minister of Justice and Attorney General

The Honourable Don Morgan, Q.C.
Minister of Justice and Attorney General

Dear Sir:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the fiscal year ending March 31, 2010.

Donald H. Layh, Q.C.
Chair

About the Commission

Objectives

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission,* proclaimed in force in November 1973, and began functioning in February 1974.

The Law Reform Commission Act provides that:

> The Commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law.

Topics for the Commission's research program are brought before meetings of the Commission for consideration. These topics may originate from a recommendation of the Minister of Justice and Attorney General, the Commission and its staff, the judiciary, the legal profession, other professional organizations, or the public generally. Once the research study in a particular project is completed, the matter is placed before the Commission for discussion and consideration. The Commission may decide to issue background papers or tentative proposals for circulation to the public in order to obtain criticism and comment prior to the preparation of a final report. This may entail public meetings, hearings and workshops. The Commission's recommendations are embodied in its final report to the Minister of Justice and Attorney General.

The Commission works closely with the Ministry of Justice and Attorney General in formulating research projects and facilitating adoption of its proposals. The Commission has also made an ongoing contribution on behalf of the province to the national work of the Uniform Law Conference of Canada. Commissioners and the Director of Research have served as members of the Conference for many years.

The Commission is a member of the Federation of Law Reform Agencies of Canada.

The Commissioners and Staff

The Commissioners:

- Mr. Donald H. Layh, Q.C. Chair
- Ms. Susan Amrud, Q.C.
  Saskatchewan Ministry of Justice and Attorney General
- Professor Ronald C. Cuming, Q.C.
  (Chair from 1978-82)
  College of Law
  University of Saskatchewan
- Mr. Kenneth P. R. Hodges, Q.C.
  (Chair from 1992-2000)
- The Honourable Georgina R. Jackson
  Justice of the Court of Appeal for Saskatchewan
- Professor Michaela Keet
  College of Law
  University of Saskatchewan
- Mr. Michael Milani, Q.C.
  Practising Lawyer

Staff:

Mr. Michael Finley is Director of Research

Contact Information:

The Commission can be contacted at:

410 26th Street West
SASKATOON SK S7L 0H9

Telephone (306) 665-6428

E-mail: mjfinley@sasktel.net

Previous Members of the Commission

- Professor Brian A. Grosman, Q.C. (Chair 1974-78)
- Professor R.C.C. Cuming, Q.C. (Chair 1978-82) and active member of the Commission
- Dr. D.A. Schmeiser, Q.C. (Chair 1982-87)
- Mr. Dale Linn, Q.C. (Chair 1987-92)
- Mr. Kenneth P.R. Hodges, Q.C. (Chair 1992-2000) and active member of the Commission
- Ms. Merrilee Rasmussen, Q.C. (Chair 2000-08)
- Ms. Kathleen Robertson (Chair 2008-09)
- The Honourable E.D. Bayda, Q.C. (1974-76) former Chief Justice of the Court of Appeal for Saskatchewan
- Mr. George J.D. Taylor, Q.C. (1974-82)
- The Honourable Marjorie A. Gerwing (1976-92) Justice of the Court of Appeal for Saskatchewan
- Mr. Gordon J. Kuski, Q.C. (1982-92)
- The Honourable Gene Anne Smith (1992-98) Justice of the Court of Appeal for Saskatchewan
- Ms. Gailmarie Anderson (1992-2001)
- The Honourable Dianne Morris (1992-02) Judge of the Provincial Court of Saskatchewan
- Mr. Douglas Moen, Q.C. (2000-02)
- Mr. Alan McIntyre (2000-08)
- The Honourable Robert D. Laing (2003-06) Chief Justice of the Court of Queen's Bench
- Ms. Sarah Buhler (2003-08)
- Ms. Carole Lavallee (2003-09)
- Ms. Susan Bates (2003-09)

Financial Information

The Law Reform Commission is financed by annual grants from the Government of Saskatchewan and the Law Foundation of Saskatchewan. The Commission received an annual grant of $60,000 from the Government of Saskatchewan (through the Ministry of Justice and Attorney General). The Commission received an annual grant of $50,000 from the Law Foundation of Saskatchewan.

Commissioners, other than the judicial and provincial government representatives, receive honoraria from the Law Reform Commission of Saskatchewan based on the Order in Council by which they are appointed. The Chair receives $235 per day when engaged in work of the Commission and Commissioners receive $155 per day. The Director of Research is employed on a contractual basis at the rate of $70,000 per annum.

Research Program and Activities

Inventory of Law Reform Issues

The Commission has compiled an inventory of law reform issues in Saskatchewan. The inventory process was designed to identify emerging trends in law and society, as well as more discrete topics for law reform. Consultations with interested groups, individuals, and organizations have focused on identification of issues and challenges, grouped about eight major themes:

- Democracy
- Aboriginal Peoples
- Human Rights
- Families and Children
- Vulnerable Adults
- Communities and the Environment
- Administrative Law and Procedure
- Technical Legal Issues

The inventory serves as a basis for the future work of the Commission. The Commission is also hopeful that it will assist legislators, researchers, and others interested in law reform to identify emerging needs of the justice system in Saskatchewan.

Implementation of Recent Projects

Commission projects that have recently been implemented in legislation include: *The Evidence Act* in 2006, amendments to *The Administration of Estates Act* in 2008, *The Trustee Act, 2009,* and amendments to *The Queen's Bench Act* in 2010.

Citation of Commission Reports by the Courts

Commission reports and other publications continue to be frequently referred to in decisions of the courts in Saskatchewan and elsewhere in Canada and the Commonwealth.

A search of reported Canadian decisions in 2009 found that the Commission's work has been referred to in 72 reported decisions, including 47 Saskatchewan decisions and three decisions of the Supreme Court of Canada.

Research Program 2009-10

Vaccination and the Law: A final report was issued on this topic. Childhood vaccination programs have been described as "a cornerstone of improving the health of people worldwide." The recent H1N1 pandemic underlines the importance of vaccination programs. Most people in Saskatchewan take the benefits of vaccination for granted, and the province has a successful, publicly funded and delivered childhood vaccination program. However, the Commission identified emerging issues that affect public confidence in vaccination programs. A consultation paper was issued in 2007. The Final Report makes recommendations concerning compensation for vaccine-related injury, informed consent and refusal, and reporting of adverse effects of vaccinations.

Civil Rights in Saskatchewan Long-term Care Facilities: The Law Reform Commission provided funding to Professor Doug Surtees, of the College of Law, University of Saskatchewan, to conduct a study of Civil Rights in Special Care Homes in Saskatchewan. Examples of a lack of respect for civil rights include: insufficient diaper changes; inappropriate rules such as requiring an adult to "sign out" competent residents, inappropriate rules regarding smoking, and lack of privacy when dressing, changing or bathing.

The Commission has prepared a consultation paper on Civil Rights in Long-term Care Facilities which incorporates Professor Surtees's findings. This paper will be issued in 2010.

Appeals from Administrative Tribunals and Other Statutory Powers of Decision: A consultation paper on this topic was released. Response to the paper during consultations has been extensive, and will inform the Commission as it formulates proposals.

This project continues the Commission's extensive review of administrative law and procedure in Saskatchewan. The paper is concerned with appeals to the courts from decisions directly affecting individuals that are made by officials under statutory authorization. Such appeals are usually provided for by statute. However, there is a lack of consistency in the form and scope of statutory appeal rights, and some statutes do not provide for appeals. This paper is intended to be the first step toward rationalization of appeal rights. It reviews the current law, and formulates a series of questions for discussion about the form and content that appeal provisions should have.

Administrative Penalties: A consultation paper on this issue was released, and is currently in consultation. Administrative penalties are a relatively new means of enforcing compliance with regulatory legislation through monetary penalties assessed and imposed by a regulator without recourse to a court or independent administrative tribunal. It has been suggested that administrative penalties are appropriate tools "to engender compliance and co-operation from the 'regulated community' to secure environmental or consumer protection." However, because they do not involve the courts or tribunals at first instance, questions have been raised about the extent to which procedural fairness is being provided when administrative penalties are imposed. This consultation paper discusses such issues as notice and disclosure requirements, hearing requirements, and perhaps most importantly, rights of appeal.

***The Privacy Act* and the Tort of Invasion of Privacy:** A consultation paper was released. The Saskatchewan *Privacy Act* creates a tort of invasion of privacy. There is similar legislation in three other provinces, and a Uniform Act prepared by the Uniform Law Conference of Canada. Privacy is once again becoming a prominent concern in society, as the means by which privacy can be violated grow continually more numerous and sophisticated. *The Privacy Act* has lagged behind these developments. This project addresses the extent to which the tort of privacy is an effective way to address these concerns.

Court Costs: A research paper on this matter was prepared. Court costs were examined as an access to justice issue, asking the question: "How does the present costs regime, which ordinarily requires an unsuccessful party to pay part, but not all, of the successful party's legal fees, impact access to justice by encouraging or discouraging litigants?" After an analysis of costs regimes in Canada and elsewhere, and a literature review, the paper concluded that the effects of costs orders on the behaviour of litigants is uncertain, and changes in the costs regime would not have a predictable effect.

Crown Immunity: A consultation paper on this topic will be released in 2010. Although *The Proceedings Against the Crown Act* allows the government of Saskatchewan and government officials to be sued in court in the same manner as ordinary citizens, Crown immunity continues to exist under various other statutory provisions. In particular, *The Interpretation Act* creates a presumption that no Act binds the Crown unless the Act provides otherwise. The consultation paper will discuss and seek input on the presumption and whether or not it should be retained.

Fraudulent Conveyances and Preferences: The Commission provided funding to Professor Tamara Buckwold, of the University of Alberta, College of Law, to prepare reports for the Commission and Uniform Law Conference of Canada on this topic. Two reports have been issued: *Reform of Fraudulent Conveyances and Fraudulent Preferences Law: Part I Transactions at Undervalue (2007),* and *Reform of Fraudulent Conveyances and Fraudulent Preferences Law: Part II Preferential Transfers (2008).* Work is ongoing.

Corporate Fiduciary Services: A consultation paper on this topic was issued in 2007. It remains open for comment. The paper asks the question "Should corporate trustees and fiduciaries, other than trust companies, be permitted?"

At present, only trust companies are permitted to act as corporate trustees, executors, and administrators in Canada. However, trust companies have increasingly become multi-purpose financial institutions. At the same time, because of our aging population, more people require assistance to manage the wealth they have accumulated over a lifetime, and may require a variety of fiduciary services. In other jurisdictions, including the United States, Britain, and other Commonwealth countries, trust and fiduciary services are more widely available, and more varied in content.

New Projects Approved by the Commission

The Commission has approved project proposals for several new projects. Research on these projects will be undertaken in 2010-11.

Needy Persons Certificates and Fee Waivers: Pro Bono Law Saskatchewan and Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) have requested the Commission to consider a project that focuses on the administration of Needy Persons Certificates and, more broadly, access to court and tribunal fee waivers for indigent members of the public. A project proposal has been approved by the Commission. Preparation of a consultation paper will begin shortly.

Commercial Tenancies: *The Landlord and Tenant Act* was originally adopted in 1918-19. Much of it is a consolidation of English statute law. The only major change in the statute law governing landlords was adoption of *The Residential Tenancies Act,* which took residential leases out of *The Landlord and Tenant Act.* Recent decisions have emphasized that a lease is also a contract and that the law of contract may provide remedies more in keeping with the expectations of contemporary landlords and tenants than either the statute law or common law of leases. Some provisions of *The Landlord and Tenant Act* are nearly incomprehensible to modern landlords and tenants, and even to their lawyers. This project will consider what should be included in a modern commercial tenancies statute. Background research has begun, and a consultation paper is projected for release in 2010.

Foreclosure Law: A referral from the Minister of Justice has been received by the Commission. The Commission is currently designing a project on this topic.

Electronic copies of Commission publications are available on line from the Commission at its web site: **http://www.lawreformcommission.sk.ca**

Financial Statements

Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Law Reform Commission of Saskatchewan. Fulfilling this responsibility requires the preparation and presentation of financial statements and other financial information in accordance with Canadian generally accepted accounting principles. These recommendations are consistently applied, with any exceptions specifically described in the financial statements.

The accounting systems used by the Commission include an appropriate system of internal controls to provide reasonable assurance that:

- transactions are authorized;
- the Commission's assets are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other information; and
- the accounts are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other financial information.

To ensure management meets its responsibilities for financial reporting and internal control, the members of the Law Reform Commission of Saskatchewan discuss audit and reporting matters with representatives of management at regular meetings. The members of the Commission have also reviewed the financial statements with representatives of management.

The Provincial Auditor of Saskatchewan has audited the Law Reform Commission of Saskatchewan's statement of financial position as at March 31, 2010, and the related statements of operations and changes in net assets and cash flows for the year then ended. The Provincial Auditor's responsibility is to express an opinion on the fairness of management's financial statements. The Auditor's Report outlines the scope of the audit and the Provincial Auditor's opinion.

Donald H. Layh, Q.C.
Chair

The financial statements on the following pages provide an account of the financial activities of the Law Reform Commission of Saskatchewan for the fiscal year ended March 31, 2010.

LAW REFORM COMMISSION OF SASKATCHEWAN

FINANCIAL STATEMENTS

For the Year Ended March 31, 2010

Provincial Auditor Saskatchewan

1500 Chateau Tower
1920 Broad Street
Regina, Saskatchewan
S4P 3V2

Phone: (306) 787-6398
Fax: (306) 787-6383
Web site: www.auditor.sk.ca
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SASKATCHEWAN

AUDITOR'S REPORT

To: The Members of the Legislative Assembly of Saskatchewan

I have audited the statement of financial position of the Law Reform Commission of Saskatchewan as at March 31, 2010 and the statements of operations and changes in net assets and cash flows for the year then ended. The Commission's management is responsible for preparing these financial statements for Treasury Board's approval. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2010 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina, Saskatchewan
June 21, 2010

Brian Atkinson, FCA
Acting Provincial Auditor

Statement 1

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF FINANCIAL POSITION
As at March 31

	2010	2009
ASSETS		
Current		
Cash	$ 69,845	$ 44,466
Short-term investments (Note 3)	100,399	100,000
Accounts receivable	461	13
Prepaid expense	1,643	1,436
Total Assets	$ 172,348	$ 145,915
LIABILITIES AND NET ASSETS		
Current Liabilities		
Accounts payable and accrued liabilities	$ 847	$ 341
Net Assets		
Unrestricted net assets	171,501	145,574
Total Net Assets (Statement 2)	171,501	145,574
Total Liabilities and Net Assets	$ 172,348	$ 145,915

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF OPERATIONS AND CHANGES IN NET ASSETS
Year Ended March 31

	Budget	2010	2009
Revenue			
Ministry of Justice and Attorney General grant	$ 60,000	$ 60,000	$ 60,000
Law Foundation grant (Note 5)	60,000	50,000	60,000
Interest and miscellaneous	1,000	530	1,794
	121,000	110,530	121,794
Expenses			
Salaries and employee benefits	73,143	72,954	73,687
Conference and travel expense	4,625	3,561	3,284
Commissioners' honoraria	19,550	1,979	6,514
Professional services	---	---	1,010
Office supplies and services	8,670	2,856	11,537
Professional fees	1,800	1,774	1,734
Miscellaneous	700	1,479	901
	108,488	84,603	98,667
Excess of revenues over expenses	$ 12,512	25,927	23,127
Net assets, beginning of year		145,574	122,447
Net assets, end of year		$ 171,501	$ 145,574

(See accompanying notes to the financial statements)

Statement 3

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF CASH FLOWS
Year Ended March 31

	2010	2009
Cash flows from (used in) operating activities		
Ministry of Justice and Attorney General grant	$ 60,000	$ 60,000
Law Foundation grant	50,000	60,000
Interest and Miscellaneous Revenue received	536	2,810
Cash paid to suppliers and employees	(84,758)	(100,291)
Cash provided by operating activities	25,778	22,519
Cash flows from (used in) investing activities		
Purchase of short-term investments	(100,399)	(100,000)
Proceeds from disposal and redemption of investments	100,000	100,000
Cash used in investing activities	(399)	---
Increase in cash	25,379	22,519
Cash, beginning of year	44,466	21,947
Cash, end of year	$ 69,845	$ 44,466

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
NOTES TO THE FINANCIAL STATEMENTS
March 31, 2010

1. Incorporation

The Law Reform Commission Act was amended effective November 6, 1987. At that date the Commission became a body corporate and continued the operations of the Law Reform Commission of Saskatchewan.

The purpose of the Commission is to review all the laws of the Province with a view to its systematic development and reform and generally the simplification and modernization of the law.

2. Significant Accounting Policies

These financial statements have been prepared in accordance with Canadian generally accepted accounting principles and include the following significant accounting policies:

a) Revenue Recognition

The Commission follows the deferral method of accounting and recognizes unrestricted contributions as revenue when received or receivable.

b) Financial Instruments

Classification

The Commission's financial instruments and their classification are as follows:

Financial Instrument	Classification
Cash	Held-for-trading
Short-term investments	Held-for-trading
Accounts receivable	Loans and receivables
Accounts payable and accrued liabilities	Other financial liabilities

Held-for-trading financial assets and liabilities are measured at fair value and changes in their fair value are recognized in the Statement of Operations and Changes in Net Assets. Transaction costs are expensed as incurred for financial instruments classified as held-for-trading. Loans and receivables and other financial liabilities are measured at amortized cost. Due to their short-term nature, the amortized cost of these instruments approximates their fair value.

Significant terms and conditions

There are no significant terms and conditions related to the financial instruments that may affect the amount, timing and certainty of future cash flows.

Interest rate risk

The Commission is exposed to interest rate risk when the value of its financial instruments fluctuates due to changes in market interest rates.

The Commission does not have any long-term investments that may be affected by market pressures.

The Commission's receivables and payables are non-interest bearing.

Credit risk

The Commission is exposed to credit risk from potential non-payment of accounts receivable or investment income and principal.

The Commission rarely has accounts receivable. Most of the Commission's receivables are from provincial agencies, federal government and commission members; therefore credit risk is minimal.

All investments are purchased from and held with major banks; therefore, credit risk for investments and related accrued interest receivable is minimal.

c) Use of estimates

The preparation of financial statements in accordance with Canadian generally accepted accounting principles require management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the period. These estimates are reviewed periodically, and, as adjustments become necessary, they are reported in earnings in the period in which they become known.

3. Short-term Investments

Short-term investments consist of a guaranteed income certificate with an effective interest rate of 0.2% (2009 – 0.4%).

4. Related Party Transactions

Included in these financial statements are transactions with various Saskatchewan Crown corporations, ministries, agencies, boards and commissions related to the Commission by virtue of common control by the Government of Saskatchewan and non-Crown agencies subject to joint control and significant influence by the Government of Saskatchewan (collectively referred to as related parties).

Routine operating transactions with related parties are recorded at agreed upon exchange amounts and settled under normal trade terms.

Other related party transactions at year-end are as follows:

	2010	2009
Operating revenues		
Ministry of Justice and Attorney General	$ 60,000	$ 60,000
Queen's Printer	128	128
Operating expenses		
Saskatchewan Workers' Compensation Board	203	94

In addition, the Commission pays Provincial Sales Tax to the Ministry of Finance on all its taxable purchases. Taxes paid are recorded as a part of the cost of those purchases.

5. Law Foundation Grant

The Commission received a grant in 2009-10 from the Law Foundation of Saskatchewan for $50,000 (2008-09 – $60,000).